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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,147	01/16/2004	Lawrence I. Wechsler	W1000-24	7189
7590	10/13/2005			
Lawrence I. Wechsler One Wooleys Lane Great Neck, NY 11023			EXAMINER NGUYEN, TRINH T	
			ART UNIT 3644	PAPER NUMBER
DATE MAILED: 10/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/760,147	Applicant(s) WECHSLER, LAWRENCE I.	
	Examiner Trinh T. Nguyen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment dated 8/29/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19: the term "said toy access" lacks proper antecedent basis; and it is not understood what "manner as to discourage access by a snout of an animal"? Also, it is not understood what is being claimed by the phrase "along said tow access based upon a radial size".

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4, 9-12, 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Willinger et al. (US 6,651,590) (please see a more detail Figure 22 of Willinger et al. attached with the Office Action for further explanation).

For claim 1, Willinger et al. disclose a toy, comprising: a structural configuration including a portion thereof defining an animal restricted region; and said structural configuration including an other portion defining an animal access region.

For claim 2, Willinger et al. further disclose said animal restricted region is created by provision of structure at least partially physically shielding said animal restricted region from access by a mouth of the animal.

For claim 3, Willinger et al. further disclose said animal restricted region includes at least one handle graspable by a hand of a human user.

For claim 4, Willinger et al. further disclose a toy which inhibits user hand contact with animal saliva deposited on a play toy during interactive play by the animal and the user, comprising: at least one structural portion being disposed in a position readily accessible by a mouth of the animal and by which the animal can hold the toy by retaining the at least one structural portion in the mouth; at least one hand-holdable portion grippable by the user; and a shielding portion arranged to at least partially discourage animal access to said at least one hand-holdable portion

For claim 9, Willinger et al. further disclose said at least one structural portion includes members disposed in circumferentially spaced apart positions about a toy axis and radially spaced apart therefrom; said at least one hand-holdable portion is positioned radially inward of an outermost radial extent of said members.

For claim 10, Willinger et al. further disclose said members include at least three members at least a portion of each of the members extending longitudinally co-directional with said toy axis.

For claim 11, Willinger et al. further disclose said at least a portion of said three members which extend longitudinally are spaced apart circumferentially from one another by approximately equal angular intervals.

For claim 12, Willinger et al. further disclose said at least one hand-holdable portion includes at least one handle of elongated dimension approximately aligned longitudinally with the toy axis; and radially outward portions of the members are extended outward from a center of the toy in an axial direction such that said radially outward portions extend past an axial position of an inwardmost end of the handle, thereby at least partially shielding the handle.

For claim 15, Willinger et al. further disclose the toy is formed integrally.

For claim 16, Willinger et al. further disclose the toy includes a resilient material.

For claims 17 and 18, it is noted that the method steps (i.e., "providing the toy with an animal access region..."; "providing the toy with an animal restricted region..."; "grabbing the animal restricted region..."; "making the toy available...") as claimed are

inherently performed within Willinger et al.'s toy, since Willinger et al.'s toy has the specific structural configurations similar to the toy claimed by the applicant.

6. Claims 1-3, and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by DeAngelis (US D475487) (please see a more detail Figure 1 of DeAngelis attached with the Office Action for further explanation).

For claim 1, DeAngelis discloses a toy, comprising: a structural configuration including a portion thereof defining an animal restricted region; and said structural configuration including an other portion defining an animal access region.

For claim 2, DeAngelis further discloses said animal restricted region is created by provision of structure at least partially physically shielding said animal restricted region from access by a mouth of the animal.

For claim 3, DeAngelis further discloses said animal restricted region includes at least one handle graspable by a hand of a human user.

For claim 19 (as best understood), DeAngelis further discloses a toy axis passes through said at least one handle, said at least one handle being accessible at least in a direction of said toy axis; and said structure at least partially physically shielding said animal restricted region from access by a mouth of the animal is at least partially defined by structural portions of said animal access regions arranged to at least partially surround at least a portion of an axial extent of said handle in such a manner as to discourage access by a snout of an animal to said handle along said toy access based upon a radial size thereof.

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For claim 20, DeAngelis further discloses said handle is defined by an elongated member extending longitudinally codirectional with said toy axis; and said structural portions of said animal access regions which are arranged to at least partially surround at least a portion of an axial extent of said handle are extended outward from a center of the toy in an axial direction past an axial position of an inwardmost end of said at least one handle.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willinger et al. (US 6,651,590).

As described above, Willinger et al. lack the outermost edges of the members are shaped to collectively describe a generally spherical envelope. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the toy of Willinger et al. in whatever form or shape was desired or expedient, wherein no stated problem is solved by having the specific shape as claimed versus the shape taught by the prior art. Furthermore, a change in form or shape is generally recognized as being well known within the level to one of ordinary skill in the art depending on one's intended use.

For claim 14, Willinger et al. further disclose the toy is self-righting, such that when tossed onto a relatively horizontal support surface, the toy will come to rest with the at least one handle extending horizontally, and generally parallel with the support surface.

Response to Arguments

9. Applicant's arguments filed 8/29/05 have been fully considered but they are not persuasive.

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an animal restricted region defines as a region of the structure of the toy which a dog is more likely to bite and hold with its mouth by virtue of either enhanced sensory attraction and/or greater relative physical accessibility, and an animal access region defines as a region or regions which are less likely to be accessed by the pet during play by reason of less sensory appeal and/or structural inaccessibility) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Note that Applicant's claim language is broad and thus the Examiner will interpret the language broadly (i.e., a fair reading of the claim language permits the Examiner to interpret that Willinger et al. and DeAngelis disclose an animal restricted region and an animal access region as shown in Figure 22 of Willinger et al. and in Figure 1 of DeAngelis).

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11. In response to applicant's argument that Willinger et al. contain no shielding structure, the Examiner disagrees. Again, note that Applicant's claim language is broad and thus the Examiner will interpret the language broadly (i.e., a fair reading of the claim language permits the Examiner to interpret that Willinger et al. disclose a shielding structure as shown in Figure 22 of Willinger et al.).

12. Further note that the method steps (i.e., "providing the toy with an animal access region..."; "providing the toy with an animal restricted region..."; "grabbing the animal restricted region..."; "making the toy available...") as claimed are inherently performed within Willinger et al.'s toy, since Willinger et al.'s toy has the specific structural configurations similar to the toy claimed by the applicant.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

The examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T. Nguyen
Primary Examiner
Art Unit 3644

10/11/05

